

Private foundation; taxable expenditure; loan to disqualified person. A loan by a private foundation to a disqualified person that constitutes an act of self-dealing, but otherwise is a permissible expenditure, is not a taxable expenditure within the meaning of section 4945(d)(5) of the Code.

Advice has been requested whether, under the circumstances described below, a loan made by a private foundation to a disqualified person that constitutes an act of self-dealing also constitutes a taxable expenditure within the meaning of section 4945(d)(5) of the Internal Revenue Code of 1954.

The private foundation made a loan to a disqualified person to generate income to be used solely for the foundation's charitable purposes. The loan was made at a reasonable rate of interest, adequately secured, and otherwise met prudent investment standards. When the foundation and the disqualified person discovered the transaction was an act of self-dealing under section 4941(d)(1)(B) of the Code, the loan was repaid with interest, and this act of self-dealing was corrected for purposes of section 4941(b)(1).

The issue presented is whether the making of the loan is also a taxable expenditure within the meaning of section 4945(d)(5) of the Code.

Section 4945(a)(1) of the Code imposes a tax on each taxable expenditure made by a private foundation.

Section 4945(d)(5) of the Code provides that the term 'taxable expenditure' includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B).

Section 53.4945-6(b)(1)(i) of the Foundation Excise Tax Regulations states that expenditures to acquire investments entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B) of the Code ordinarily will not be treated as taxable expenditures under section 4945(d)(5).

A given set of facts can give rise to taxes under more than one provision of chapter 42 of the Code. See, for example, section 53.4944-1(a)(2)(iv) of the regulations which provides that it is not intended that the taxes imposed under chapter 42 be mutually exclusive.

The fact that the loan in this case constitutes an act of self-dealing does not automatically mean that it is also a taxable expenditure. Whether the loan constitutes a taxable expenditure depends on whether it would have been a proper expenditure for the foundation were it not an act of self-dealing. The loan was made

to the disqualified person at a reasonable and otherwise prudent, and was derate of interest, adequately secured, signed solely to provide income for the foundation's charitable purposes. Under section 53.4945-6(b)(1)(i) of the regulations, the loan would have been a permissible expenditure had it not been made to a disqualified person. Under these circumstances, the making of the loan is not a taxable expenditure within the meaning of section 4945(d)(5) of the Code.